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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE GUARDIANSHIP OF: C.M., N.W.M., and T.W.	)	
VIRGINIA WATSON and HOWARD WATSON,	)	
Appellants-Respondents,	)	
vs.	)	No. 48A02-0701-CV-67
DONALD MIER and ROSE MIER,	)	
Appellees-Guardians.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0607-GU-78

October 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

In this interlocutory appeal, Virginia ("Mother") and Howard Watson ("Stepfather") (collectively, "the Parents") challenge the trial court's jurisdiction over the guardianship action concerning C.M., N.W.M., and T.W (collectively, "the Children"). We reverse.

Facts and Procedural History

C.M. and N.W.M. were born to Mother and Thomas Mitchell; T.W. was born to Mother and Stepfather.[1] The Children had been living in Florida with the Parents since 2001. Mitchell lived in Indiana. In May 2006, Mitchell passed away, and the Children came to Indiana from Florida to visit for several weeks with their maternal grandparents, Donald and Rose Mier ("the Grandparents"). On July 26, 2006, the Grandparents obtained a temporary guardianship of the Children based on C.M.'s allegations that Stepfather had molested her.[2] App. at 6-7. On September 6, 2006, the Grandparents filed a motion for expedited permanent guardianship and a motion to maintain jurisdiction in Indiana. *Id*. at 8-12. On November 6, 2006, the Parents filed their "Motion to Dismiss Guardianship and Order for Return of Children to Parents," and the court held a hearing on the matter. *Id*. at 18-21. The next day, the court interviewed the Children.[3] On November 9, 2006, the court issued an order, which

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[1] Another child, Ch.W., was born to Mother and Stepfather. However, Ch.W. remains in Florida, along with Ca.W., Stepfather's child from a prior marriage. Neither Ch.W. nor Ca.W. is a subject in the present case.

[2] Apparently, police in Indiana looked into the allegation and forwarded their report to the appropriate authorities in Florida. In response, the State of Florida declined to prosecute Stepfather on charges of sexual battery, and the Florida Department of Children and Families filed a Notice of Intent *Not* to File a Petition for Dependency. App. at 22-24.

[3] Without a transcript, we have no idea what the court and the Children discussed.

reads, in its entirety, as follows: "After interviewing [the Children] and taking matter under advisement, Court finds it has jurisdiction over [the Children]. Court has yet to discuss with Florida Judge regarding jurisdiction of [Ch.W. and Ca.W.]. *Id.* at 25.

Discussion and Decision

The Parents contend that the court erred in deciding to maintain jurisdiction because Florida is the home state of the Children under the Uniform Child Custody Jurisdiction Law ("UCCJL").[4] In addition, they assert that no evidence exists that the Children were abandoned or that Florida declined jurisdiction.

Under the UCCJL, the trial court must first determine whether it has jurisdiction and, if it does, whether to exercise that jurisdiction. *Pryor v. Pryor*, 709 N.E.2d 374, 376 (Ind. Ct. App. 1999). In determining whether a trial court has improperly exercised jurisdiction under the UCCJL, we apply an abuse of discretion standard. *Id*. An abuse of discretion will occur when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.*

The UCCJL was adopted to:

> (1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

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[4] *See* Ind. Code §§ 31-17-3-1 to -25. The UCCJL was amended in 2007, which was after the relevant events of this case occurred. *See* Ind. Code §§ 31-21-5-1 to -14. Accordingly, we shall apply the pre-2007 version of the UCCJL. *See Ind. Dep't of Envtl. Mgmt. v. Med. Disposal Servs., Inc*., 729 N.E.2d 577, 581 (Ind. 2000) ("As a general rule, the law in place at the time an action is commenced governs. 'Unless a contrary intention is expressed, statutes are treated as intended to operate prospectively, and not retrospectively.'") (quoting *Chadwick v. City of Crawfordsville*, 216 Ind. 399, 413-14, 24 N.E.2d 937, 944 (1940)).

> (2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;
> (3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that the courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;
> (4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;
> (5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;
> (6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;
> (7) facilitate the enforcement of custody decrees of other states; and
> (8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

See Westenberger v. Westenberger, 813 N.E.2d 343, 346 (Ind. Ct. App. 2004) (quoting Ind. Code § 31-17-3-1, which sets out purposes of UCCJL), *trans. denied*; *see also Hughes v. Hughes*, 665 N.E.2d 929, 931 (Ind. Ct. App. 1996).

The applicable version of the UCCJL provided in relevant part:

> (a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:
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> > (1) this state (A) is the home state of the child at the time of commencement of the proceeding, or (B) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;
> >
> > (2) it is in the best interest of the child that a court of this state assume jurisdiction because (A) the child and his parents, or the child and at least one (1) contestant, have a significant connection with this state,

> and (B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;
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> (3) the child is physically present in this state and the child has been abandoned; or
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> (4) (A) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (B) it is in the best interest of the child that this court assume jurisdiction.
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> (b) Except under paragraphs (3) and (4) of subsection (a) physical presence in this state of the child, or of the child and one (1) of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.
>
> (c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

Ind. Code § 31-17-3-3.

Our legislature has defined "home state" as: "the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as a parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child lived from birth with any of the persons mentioned. " Ind. Code § 31-17-3-2(5). The same section clarifies that "[p]eriods of temporary absence of any of the named persons are counted as part of the six (6) month or other period." *Id*. Thus, for purposes of determining jurisdiction under the UCCJL, when a child is visiting a parent in a state other than the custodial parent's home state, the time so spent is a "temporary absence" and is to be regarded the same as if the child had never left the custodial parent's state of residence. *Stewart v. Stewart*, 708 N.E.2d 903, 906 (Ind. Ct. App. 1999).

Here, the Grandparents admit that Florida was the Children's home state in November 2006. Given that the Children resided with the Parents in Florida for five years until their visit with the Grandparents and that the Parents still reside in Florida, this is a wise concession. When there exists an undisputed home state, we do not analyze other alternatives for finding jurisdiction. *See Rios v. Rios*, 717 N.E.2d 187, 192 (Ind. Ct. App. 1999) ("The significant connection test may be applied only when the child does not have a home state."); *Williams v. Williams*, 609 N.E.2d 1111, 1113 (Ind. Ct. App. 1993); *Horlander v. Horlander*, 579 N.E.2d 91, 97 (Ind. Ct. App. 1991), *trans. denied*.

Indeed, almost twenty years ago, we vacated an order granting permanent guardianship where we found that a court had "erred in seeking to find jurisdiction under the alternative significant connection basis" when there was a home state. *Matter of Guardianship of Mayes*, 523 N.E.2d 249, 251 (Ind. Ct. App. 1988). In *Mayes*, the "uncontroverted testimony from both sides" demonstrated that Illinois was the home state of the children, and that until "six weeks prior to the litigation, the children lived their entire lives in Illinois with their parents. During these proceedings, the children were absent from Illinois because of their removal by Brenda Buell who sought guardianship." *Id.* "Both parents, though separated, continued to live in Illinois throughout these proceedings." *Id.* We explained our reasoning as follows:

> According to *In re Marriage of Hudson* (1982) 4th Dist. Ind. App., 434 N.E.2d 107, 115, *cert. denied* 459 U.S. 1202, 103 S.Ct. 1187, 75 L.Ed.2d 433, "a state which would satisfy the home state test except for the children's absence retains jurisdiction for an additional six months *if a parent continues to reside in that state*." (Emphasis in original.) Only upon concluding that no state qualified as the children's home state did the *Hudson* court turn to the significant connection provision, stating that "[t]his alternative basis for

> jurisdiction was specifically drafted to come into play *when the child has been recently removed from his or her home state and the remaining spouse has also moved away*." *Id*. (Emphasis in original.) In [*Mayes*], Illinois satisfied the home state test and thereby retained jurisdiction for six months despite the children's absence because both parents continued to live there.

Id.

Similarly, in the case at bar, Florida satisfied the home state test because the Parents and the Children had lived there for five years, and since the Parents still reside there. The Children's continued absence from Florida, as a result of the Grandparents' actions, does not change the fact that Florida is the Children's home state. Therefore, we conclude that the trial court erred in seeking to find jurisdiction in Indiana under an alternative basis.[5] Our conclusion makes it unnecessary to address the lack of evidence and/or findings regarding either abandonment by the Parents or a rejection of jurisdiction by a Florida court.

Reversed.

DARDEN, J., and MAY, J., concur.

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[5] That a Florida judge "intends to retain jurisdiction of [Ch.W. and Ca.W.] through the juvenile court in the state of Florida" has no effect upon our resolution of the matter at hand. *See* Appellee's Br. at 11-12 (February 1, 2007 order granting the Grandparents' request for CCS Entry to Clarify the Record). The entry offers no insight as to whether, during the December 2006 conference call, the trial court ever asked the Florida court if it wished to exercise jurisdiction over the Children or if the call merely focused on jurisdiction over Ch.W. and Ca.W. No transcript of the December 2006 phone conference has been provided. In light of the November 9, 2006 order's language that the trial court in Indiana had " yet to discuss with Florida Judge regarding jurisdiction of [Ch.W. and Ca.W.]," one could reasonably infer that the purpose of the December 2006 phone conference was to do just that -- clarify jurisdiction over Ch.W. and Ca.W. App. at 25.